



## 12 CFR Part 1102

[Docket No. AS22-06]

### Appraisal Subcommittee; Appraiser Regulation; Temporary Waiver Requests

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Final rule.

**SUMMARY:** The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) is adopting a final rule to amend rules of practice and procedure governing temporary waiver proceedings which were promulgated in 1992 pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI).

**DATES:** This final rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Lori Schuster, Management and Program Analyst, [lori@asc.gov](mailto:lori@asc.gov), or Alice M. Ritter, General Counsel, [alice@asc.gov](mailto:alice@asc.gov), ASC, 1325 G Street NW, Suite 500, Washington, DC 20005.

### SUPPLEMENTARY INFORMATION:

#### I. Background

The purpose of Title XI<sup>1</sup> is “to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions [FRTs] are performed in writing, in accordance

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<sup>1</sup> Title XI established the ASC. The ASC Board consists of seven members. Five members are designated by the heads of the FFIEC federal member agencies (Board of Governors of the Federal Reserve System [Board], Bureau of Consumer Financial Protection [Bureau], Federal Deposit Insurance Corporation [FDIC], Office of the Comptroller of the Currency [OCC], and National Credit Union Administration [NCUA]). The other two members are designated by the heads of the Department of Housing and Urban Development (HUD) and the Federal Housing Finance Agency (FHFA).

with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.”<sup>2</sup>

As directed by Title XI, the Federal financial institutions regulatory agencies’ appraisal regulations require appraisals for FRTs to meet minimum appraisal standards as evidenced by the *Uniform Standards of Professional Appraisal Practice* (USPAP) promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation.<sup>3</sup> Title XI also requires that certified and licensed appraisers meet the minimum qualification criteria as set forth in *The Real Property Appraiser Qualification Criteria* (AQB Criteria) issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.<sup>4</sup> The State appraiser regulatory agencies enforce these federal minimum requirements for credentialed appraisers in their respective States and are subject to federal oversight by the ASC.<sup>5</sup>

Section 1119(b) of Title XI authorizes the ASC to waive, on a temporary basis, subject to approval of the FFIEC any requirement relating to certification or licensing of a person to perform appraisals under Title XI if the ASC or a State appraiser regulatory agency makes a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with FRTs in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals. A waiver terminates when the ASC determines that such significant delays have been eliminated.<sup>6</sup>

Congress intended that the ASC exercise this waiver authority “cautiously.”<sup>7</sup>

The ASC published rules of practice and procedure governing temporary waiver proceedings in

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<sup>2</sup> Title XI section 1101. *See also*, 12 U.S.C. 3331.

<sup>3</sup> Title XI section 1110, 12 U.S.C. 3339, implemented by the Office of the Comptroller of the Currency: 12 CFR 34.44; Federal Reserve Board: 12 CFR 225.64; Federal Deposit Insurance Corporation: 12 CFR 323.4; and National Credit Union Administration: 12 CFR 722.4.

<sup>4</sup> Title XI section 1116(a) and (c). *See also*, 12 U.S.C. 3345 (a) and (c).

<sup>5</sup> Title XI section 1118. *See also*, 12 U.S.C. 3347. “State appraiser regulatory agencies” are referred to in the final rule as “State Appraisal Agencies.”

<sup>6</sup> Title XI section 1119(b). *See also*, 12 U.S.C. 3348(b).

<sup>7</sup> House Comm. on Banking, Finance and Urban Affairs, Report Together with Additional Supplemental, Minority, Individual, and Dissenting Views, Financial Institutions Reform, Recovery, and Enforcement Act of 1989, H.R. Rep. No. 101-54 Part 1, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess., at 482-83.

1992.<sup>8</sup> The ASC has ordered temporary waiver relief on two occasions. The first was for the Commonwealth of the Northern Mariana Islands in February 1993 (preceded by an interim order for relief issued in December 1992). The second was in August 2019 for the State of North Dakota (which was extended in part for one additional year in 2020).

Application of the rules of practice and procedure in the present day have led the ASC to recognize advantages to revising the rules to provide greater clarity, define certain terms and amend timeframes in the procedural process to be more conducive to deliberation by the ASC, and in the event of approval, deliberation by the FFIEC. The ASC is also adopting interpretations of several terms used in section 1119(b) of Title XI. These interpretations are included in the “definitions” section of the final rule.

Though neither procedural rules nor published agency interpretations of their statutory authority require notice and comment under the Administrative Procedure Act (APA),<sup>9</sup> the ASC voluntarily submitted the proposed rule and interpretations for public comment in order to seek feedback from interested parties. On January 13, 2022, the ASC published a proposed rule to amend the rules of practice and procedure governing temporary waiver proceedings with a 60-day public comment period.<sup>10</sup>

## **II. The Final Rule**

The final rule amends rules of practice and procedure governing temporary waiver proceedings which were promulgated in 1992 pursuant to section 1119(b) of Title XI.<sup>11</sup> For the reasons discussed in section III of this SUPPLEMENTARY INFORMATION, the final rule adopts and amends the rules of practice and procedure substantially as proposed, with the following modifications:

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<sup>8</sup> 12 CFR part 1102, subpart A.

<sup>9</sup> 5 U.S.C. 553(b).

<sup>10</sup> 87 FR 2079.

<sup>11</sup> The flow chart included in the preamble of the proposed rule also applies to the final rule and can be accessed here:

<https://www.asc.gov/Documents/FederalRegisterDocuments/2022.07.25%20Temporary%20Waiver%20Flow%20Chart%20for%20Final.pdf>. This is for reference purposes only and is not part of this final rule.

- (1) definition of “Petition” to include State financial institutions regulatory agencies as potential petitioners; and
- (2) clarification that either a mandatory or discretionary waiver termination requires publication in the *Federal Register*, and that a discretionary waiver termination requires such publication with a 30-day comment period.

### **III. The Final Rule and Public Comments on the Proposed Rule**

The following is a section-by-section review and discussion of the public comments received by the ASC concerning the proposal. The ASC requested comment on all aspects of the proposed amendments to the rules of practice and procedure governing temporary waiver proceedings. The ASC received four comment letters in response to the published proposal. These comment letters were received from appraiser trade associations, a state department of financial institutions, a national advocacy association for the credit union system and a national association of state bank supervisors.

#### **A. Section 1102.1: Authority, purpose, and scope**

Section 1102.1 finalizes proposed § 1102.1 without change and clarifies the distinction between: (1) a request from a State appraiser regulatory agency, referred to in the proposed rule as a “Request for Temporary Waiver”; and (2) information received from other persons or entities (which could include a State appraiser regulatory agency), referred to in the proposed rule as a “Petition.” The procedures set forth in the final rule for ASC’s consideration of a temporary waiver varies depending on whether the ASC has received a Request for Temporary Waiver or a Petition requesting that the ASC initiate a temporary waiver proceeding.

One commenter asserted that Title XI’s temporary waiver provision was meant to support implementation of State program requirements enacted by Congress rather than to provide regulatory relief, which has caused confusion in the marketplace. The commenter did indicate general support for the proposed actions regarding the temporary waiver process but expressed

concern over negative consequences and continued confusion. Although the ASC acknowledges this comment, there is no provision in Title XI that sunsets the temporary waiver provision.

Another commenter stated that the process is cumbersome, bureaucratic and did not offer any real assistance, and added that the proposed revisions to the rule are seemingly designed to ensure the process is burdensome to the point applications are not received or will be deemed incomplete. While the current rule and this final rule seek to obtain appropriate information to inform the ASC in potentially exercising this waiver authority which Congress intended that the ASC exercise cautiously,<sup>12</sup> the final rule clarifies the information to be submitted and the procedures to be followed to the extent the ASC can exercise such authority in a procedural rulemaking.

#### B. Section 1102.2: Definitions

Section 1102.2 finalizes proposed § 1102.2 with modification to the definition of “Petition” as discussed below. The following is a discussion of those definitions on which the ASC received public comment. Definitions on which the ASC did not receive comment are not discussed below.

One commenter noted that the proposed definition of “Petition” identified Federal financial institution regulators but failed to include State financial institution regulators. The ASC agrees, and therefore proposed § 1102.2(c) is adopted with modification to the definition of “Petition” to include State financial institutions regulatory agencies as a potential petitioner.

Several commenters asked for reconsideration of the proposed definitions of “scarcity” and “delay” to be measured or objectively determined as recommended in the report released in December 2021 by the Government Accountability Office (GAO).<sup>13</sup> The ASC appreciates the commenters’ request for more precise definitions of these terms. The ASC has considered these comments and determined that “scarcity” and “delay” are best understood in the context of the

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<sup>12</sup> *Supra* note 7.

<sup>13</sup> <https://www.gao.gov/products/gao-22-104472>.

individual State or geographical political subdivision of a State waiver applicant. Further, more precise definitions would limit the ASC's flexibility in making waiver determinations. However, the ASC has included new or revised definitions and interpretations of terms in the final rule in order to provide more clarity on the processing of a Request or Petition.

Another commenter asserted that having geographic location as a factor to consider in determining if a delay is out of the ordinary and opens the door to government-sanctioned discrimination. The acknowledgement of geographic location is built into the statute in section 1119(b) of Title XI, which references a finding of scarcity of certified or licensed appraisers to perform appraisals in connection with FRTs in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals. The language in the current rule and this final rule reflects that language and recognizes varying circumstances in political subdivisions within a State. The ASC agrees it should not be applied to deprive anyone of equal access to credit.

#### C. Section 1102.3: Request for Temporary Waiver

Section 1102.3 finalizes proposed § 1102.3 without change. Section 1102.3(a) states that the State Appraisal Agency for the State in which temporary waiver relief is sought may file a Request for Temporary Waiver. Section 1102.3(b) provides that a Request for Temporary Waiver will not be deemed to have been received by the ASC unless it fully and accurately sets out:

- a written determination by the State Appraisal Agency that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State;
- the requirement(s) of State law from which relief is being sought;
- the nature of the scarcity of certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);

- the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);
- how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted; and
- meaningful suggestions and recommendations for remedying the situation.

The amendments to paragraph (b) provide clarity on information that should be included in a Request for Temporary Waiver. The amendments also modify the requirement for a State Appraisal Agency to provide “a specific plan for expeditiously alleviating the scarcity and service delays” to “meaningful suggestions and recommendations for remedying the situation” recognizing that the situation creating scarcity and delay may be completely outside the control of the State Appraisal Agency.

The amendments include the phrase “supporting documentation, statistical or otherwise verifiable.” A Request for Temporary Waiver should include clear and specific data to support a claim that there is a scarcity of appraisers leading to significant delays in the performance of appraisals for FRTs, or a specified class of FRTs, for either a portion of, or the entire State. The data supporting such a claim may vary from location to location and situation to situation. Information about the following could assist the ASC in reviewing a Request for Temporary Waiver:

- (1) Geography – location(s) of the scarcity leading to significant delay.
- (2) Transactions – types of FRTs impacted (*i.e.*, property and transaction type(s) and transaction amount(s)).
- (3) Time – length of time for waiver requested.

Section 1102.3(b) includes that a Request for Temporary Waiver address how complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted. Section 1102.3(c) clarifies that a Request for Temporary Waiver will be deemed received for purposes of publication in the *Federal Register* for notice

and comment if the ASC determines that the information submitted meets the requirements of § 1102.3(b). Section 1102.3(d) sets forth what the process is in the event a Request for Temporary Waiver is not deemed to be received; written notice from the ASC would be required with an explanation for such a determination.

One commenter expressed concern over the requirement for a Request for Temporary Waiver to include “the extent of the delays anticipated or experienced in the performance of appraisals,” stating that granting a request based solely on anticipated delays is troubling. The commenter suggested requiring clear, convincing and specific evidence. While the ASC acknowledges the basis for this concern, this is language carried over from the current rule, and was helpful information for the ASC in considering more recent temporary waiver requests. The ASC would not consider “anticipated delay” alone, but rather would take this into account with all other information received.

The commenter addressed the need for applicants to understand the limited scope of temporary waivers to FRTs, that a temporary waiver does not remove the requirement for an appraisal for FRTs, and that many mortgage transactions are guided by underwriting requirements of an entity not covered under the FRT definition. The ASC agrees with the commenter’s observations. The commenter also expressed concern that all available options should be exhausted prior to temporary waivers being considered, such as temporary practice permits and reciprocal licensing, and that States should be required to do so. While the ASC agrees that such options may be useful to minimize appraiser shortages, imposing such a requirement would be outside of the scope of this rulemaking, which is to amend existing rules of practice and procedure for temporary waivers.

The commenter also asserted that the ASC should afford great deference to the State appraiser regulatory agency in the processing of a Request for Temporary Waiver, and that the ASC should have clear and convincing evidence if it proceeds contrary to the State's position.



The final rule has deference built into the process for a State's Request for Temporary Waiver.

If all information is properly submitted, it is promptly published in the *Federal Register*.

Even in the case of a Petition requesting the ASC exercise its discretionary authority to initiate a temporary waiver proceeding, the final rule incorporates the option for ASC referral and consultation with the State, while at the same time, maintaining the statutory responsibility for the ASC to make the determination, which would require FFIEC approval in the case of a temporary waiver being granted.

One commenter asked for reconsideration of the new requirement to address how complaints concerning appraisals by persons who are not credentialed would be processed stating that it is unnecessary since State regulators would continue to review and process complaints. Another commenter questioned this requirement stating that it is unnecessary since transactions would be governed by FFIEC agencies chartering or licensing the lender. While State appraiser regulatory agencies are charged with effective supervision of credentialed appraisers, some States may not have the authority to process complaints about unlicensed or uncredentialed individuals. The ASC found this to be a void when a temporary waiver was granted, and therefore review and processing of complaints should be addressed proactively in considering a Request for Temporary Waiver. If a State regulator would indeed continue to review and process such complaints, it would merely need to state that in the Request for Temporary Waiver. If the State lacks authority to do so, other options could be explored in a proactive manner.

A commenter stated that the ASC's request for documentation, statistical or otherwise verifiable, is a request for something that does not exist due to lack of a centralized reporting or gathering mechanism for such data. The final rule includes the phrase "supporting documentation, statistical or otherwise verifiable." This is to provide clarification, without being overly prescriptive, as to what a Request or Petition for temporary waiver should include to support the existence of a scarcity and delay, and what the ASC will consider in determining receipt of a Request or Petition. This leaves options open for a requester or petitioner to provide

clear and specific data to support a claim that there is a scarcity of appraisers leading to significant delays in the performance of covered appraisals, while recognizing the data supporting such a claim may vary from location to location and situation to situation.

D. Section 1102.4: Petition requesting the ASC initiate a temporary waiver proceeding

Section 1102.4 finalizes proposed § 1102.4 with modification to § 1102.4(a) to include State financial institutions regulatory agencies as a potential petitioner, consistent with the modification to the definition of “Petition” in § 1102.2(c).

Section 1102.4 clarifies that a Petition is a request for the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding. Section 1102.4(a), as modified, states that a Petition may be filed by the Federal or State financial institutions regulatory agencies, their respective regulated financial institutions, or other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency.

Section 1102.4(b) provides that a Petition should include:

- information (statistical or otherwise verifiable) to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State; and
- the extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable).

A Petition may also include meaningful suggestions and recommendations for remedying the situation. The amendments to this subsection provide clarity on information that should be included in a Petition while easing the expectation that a Petition contain the specificity of a Request for Temporary Waiver from a State Appraisal Agency.

The amendments include the phrase “supporting documentation, statistical or otherwise verifiable.” A Petition should include data to support a claim that there is a scarcity of appraisers

leading to significant delays in the performance of appraisals for FRTs, or a specified class of FRTs, for either a portion of, or the entire State. Section 1102.4(c) clarifies the requirement for a petitioner to provide a copy of their Petition to the State Appraisal Agency, unless the Party filing the Petition is the State Appraisal Agency.

Section 1102.4(d) provides that a Petition may be processed for further action if the ASC determines that the information submitted meets the requirements of § 1102.4(b) and that further action should be taken to determine whether a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State. Section 1102.4(e) sets forth what is required in the event a Petition does not meet the requirements of § 1102.4(b) and thereby is either denied or referred back to the petitioner. In either case, written notice from the ASC would be required with an explanation for such a determination.

Section 1102.4(f) states that if a Petition is processed for further action, the ASC may initially refer a Petition to the State Appraisal Agency where temporary waiver relief is sought for evaluation and further study, or the ASC may take further action without referring a Petition to the State Appraisal Agency. If the ASC refers a Petition to the State Appraisal Agency, § 1102.4(g) states that in the event the State Appraisal Agency opts to conduct evaluation and further study on a Petition, the State Appraisal Agency may issue a written determination that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a class of FRTs within either a portion of, or the entire State. Assuming the State Appraisal Agency has addressed the items that would be included in a Request for Temporary Waiver as set forth in § 1102.3(b), the Petition would now be subject to the procedures and requirements for a Request for Temporary Waiver.

The State Appraisal Agency could alternatively recommend that the ASC take no further action on the Petition, or simply decline to conduct evaluation and further study on a Petition. In

either case, the ASC may exercise its discretion in determining whether to issue an Order initiating a temporary waiver proceeding.

One commenter stated that the proposed option to refer a Petition to the State appraiser regulatory agency may cause delay and that there is no statutory requirement for such a referral. Another commenter asserted that the option to refer a Petition to the State appraiser regulatory agency results in a delegation to the State appraiser regulatory agency and will create inconsistencies between States. The final rule incorporates the option for referral with the State while at the same time maintaining the statutory responsibility for the ASC to make a determination. It is important to note that the decision-making authority is with the ASC with approval from the FFIEC in the case of a temporary waiver being granted. However, given State regulators may be the most knowledgeable concerning any scarcity or delay within their borders, the ASC believes it appropriate to include the option to refer or consult with State regulators in the event of a Petition being filed.

Another commenter stated that the rule as proposed creates two classes of applicants, and that governmental agencies such as State bank regulators need the ability to directly apply for a waiver without being referred to State appraiser regulatory agencies. Section 1102.3(a) states that the State appraiser regulatory agency for the State in which temporary waiver relief is sought may file a Request for Temporary Waiver as distinguished from a Petition from other persons or entities as proposed in § 1102.4. Alternatively, a State appraiser regulatory agency may submit a Petition as set forth in proposed § 1102.4. The ASC believes this is consistent with the intent of the current rule<sup>14</sup> and agrees with the rationale set forth in the preamble of the current rule. The State appraiser regulatory agencies have always been given a more direct path to seek temporary

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<sup>14</sup> “The rules provide persons other than the State appraisal regulatory agencies (‘State agencies’) with the opportunity to submit informational submissions to the ASC. They also may request that the ASC exercise its discretionary authority to provide temporary waiver relief. The ASC will consider such submissions and requests in determining whether it should initiate a temporary waiver proceeding.” *See* 57 FR 10980 (April 1992).

waiver relief. Referral of a Petition from other persons or entities is an option the ASC may exercise but is not required as the commenter seems to suggest.

The commenter added that the rule as proposed requires applicants to provide meaningful suggestions and recommendations for remedying the situation, and that the cause is often complex, and the applicant may not be in a position to understand the greater political, legal or socioeconomic forces causing the shortage. As clarification, and as proposed, the final rule states that a Petition “may” include meaningful suggestions and recommendations for remedying the situation. This is not new and was carried over from the current rule. The ASC has acknowledged this is not a problem for the applicant alone to resolve. Particularly in the North Dakota temporary waiver process, the complexity of the problem was recognized, which was the basis for the condition to the Order granting a temporary waiver: "During the one-year period, the Requester is expected to develop a plan through continued dialogue with North Dakota stakeholders, including the Appraiser Board, to identify potential solutions to address appraiser scarcity and appraisal delay."<sup>15</sup>

One commenter expressed concern about availability of appraisal services, especially in rural areas, and the difficulty in securing timely appraisals. While recognizing multiple reasons for scarcity in areas, the commenter expressed support for revision of minimum credentialing requirements as established by the Appraisal Foundation’s Appraiser Qualifications Board (AQB) to ensure new entrants into the profession and increase diversity. While the ASC supports a review of minimum credentialing requirements as established by the AQB to ensure they do not impose a barrier to entry into the profession and promote diversity, revisions to minimal credentialing requirements is outside the scope of this procedural rulemaking.<sup>16</sup>

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<sup>15</sup> 84 FR 38630, 38633 (Aug. 7, 2019).

<sup>16</sup> See Agency Actions to Advance Valuation Equity; Building a well-trained, accessible, and diverse appraiser workforce 3.1: “Update appraiser qualification criteria related to appraiser education, experience, and examination requirements to lower barriers to entry in the appraiser profession.” *Action Plan to Advance Property Appraisal and Valuation Equity; Closing the Racial Wealth Gap by Addressing Mis-valuations for Families and Communities of Color* at 5 (March 2022).

The commenter asked for reconsideration of what they understood to be a new requirement for a written determination by the State appraiser regulatory agency. That requirement is only in the case of a Request for Temporary Waiver and is not required in the case of a Petition. Moreover, the requirement is part of the statute and the current rule: section 1119(b) of Title XI authorizes the ASC to waive, on a temporary basis, subject to approval of the FFIEC "any requirement relating to certification or licensing of a person to perform appraisals under [Title XI] if the [ASC] or a [State appraiser regulatory agency] makes a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with [FRTs] in a State. . . ." The final rule clarifies the application of this statutory requirement.

E. Section 1102.5: Order initiating a temporary waiver proceeding

Section 1102.5 finalizes proposed § 1102.5 without change. Section 1102.5 clarifies that an Order initiating a temporary waiver proceeding may be in response to a Petition or may be initiated by the ASC without a Petition having been submitted. In either event, such an Order would include consideration of certain items that would be addressed in a Request for Temporary Waiver. (*See e.g.*, § 1102.3(b)(2) through (6), *Contents and Receipt of a Request for Temporary Waiver*.) If such an Order is issued, the ASC shall publish a *Federal Register* notice in accordance with § 1102.6(b).

F. Section 1102.6: Notice and comment

Section 1102.6 finalizes proposed § 1102.6 without change and does not vary in substance from § 1102.4 of the current rule, which provides for a 30-day notice and comment period on either a Request for Temporary Waiver or an Order initiating a temporary waiver proceeding.

G. Section 1102.7: ASC determination.

Section 1102.7 finalizes proposed § 1102.7 without change. Section 1102.7 expands the current 45-day deadline for the ASC to make a determination. Section 1102.7 also, for reasons set forth in the proposed rule, eliminates the interim Order from the rules of practice and procedure. With respect to recent requests for temporary waivers, or other information

submissions requesting the ASC initiate a proceeding, the 45-day turnaround limited the time available to process and evaluate information submitted, including comments received during the notice and comment period. The timeframe for an ASC determination, on either a Request for Temporary Waiver or an Order initiating a temporary waiver proceeding, is expanded from 45 calendar days to 90 calendar days from the date of publication in the *Federal Register* to allow sufficient time for thorough processing and consideration. Section 1102.7 also clarifies that in the event the ASC issues an Order approving a temporary waiver, which is only effective upon FFIEC approval of the waiver, the FFIEC's consideration of the waiver is not subject to the ASC's 90-day timeframe for a determination.

One commenter asked for reconsideration of extending the ASC's timeframe for action on temporary waivers. The final rule provides clarity on what is expected to avoid delays in submitting proper information to the ASC. The ASC found the 45-day turnaround period, which allows only 15 days for consideration of comments received during the notice and comment period, to be a constraint on proper deliberation.

Another commenter expressed concern over removing the 45-day requirement for the ASC to take action stating that the ASC may deem a Request or Petition incomplete which may result in further delay. Under either the current rule or this final rule, the timeframe for taking action would not commence in either event until a Petition or Request is deemed received. Incomplete information submitted by an applicant would be the cause of delay in either circumstance. The final rule provides more clarity, particularly regarding the type of information that is expected in a Petition or a Request. This degree of specificity is intended to avoid rejection or supplementation of a Request or Petition, which was the case in the North Dakota request, resulting in a delay of nearly one year.

#### H. Section 1102.8: Waiver extension

Section 1102.8 finalizes proposed § 1102.8 without change and does not vary in substance from § 1102.6 of the current rule.

## I. Section 1102.9: Waiver termination

Section 1102.9 finalizes proposed § 1102.9 with clarification that either a mandatory or discretionary waiver termination requires publication in the *Federal Register*, and that a discretionary waiver termination requires such publication with a 30-day comment period. Section 1102.9 distinguishes between mandatory waiver termination versus discretionary waiver termination. Section 1119(b) of Title XI states, “[t]he waiver terminates when the [ASC] determines that such significant delays have been eliminated.” Therefore, § 1102.9(a) requires termination in the event of such a finding by the ASC. Section 1102.9(b) retains the provision for a discretionary waiver termination in the event the ASC finds that the terms and conditions of the waiver Order are not being satisfied. Section 1102.9(c) requires publication in the *Federal Register* of either a mandatory or discretionary waiver termination, and Section 1102.9 finalizes proposed § 1102.9 with clarification that either a mandatory or discretionary waiver termination requires publication in the Federal Register, and that a discretionary waiver termination requires such publication with a 30-day comment period. In the absence of further ASC action to the contrary, a discretionary waiver termination automatically becomes final 21 calendar days after the close of the comment period. Consistent with statute, a mandatory waiver termination is final upon such a determination being made by the ASC.

## **IV. Regulatory Requirements**

The ASC has concluded that the final rule constitutes a rule of agency organization, procedure, or practice, and is therefore exempt from the notice-and-comment rulemaking requirements of the APA.<sup>17</sup> For the same reason, the amendments are not subject to the 30-day delayed effective date for substantive rules under the APA.<sup>18</sup> Moreover, agency interpretations of terms used in their statutory authority are exempt from the notice and comment requirement. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not

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<sup>17</sup> 5 U.S.C. 553(b).

<sup>18</sup> 5 U.S.C. 553(d).



require an initial or final regulatory flexibility analysis.<sup>19</sup>

### **Paperwork Reduction Act**

There is no collection of information required by this final rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The Paperwork Reduction Act of 1995<sup>20</sup> (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The ASC has reviewed this final rule and determined that it does not contain any information collection requirements subject to the PRA. Accordingly, no submissions to OMB will be made with respect to this final rule.

### **Unfunded Mandates Reform Act of 1995 Determination**

This final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. This final rule amends the current rule to provide definitions of terms and greater clarity on the proceedings for a temporary waiver. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.* is not required.

### **List of Subjects in 12 CFR Part 1102**

Administrative practice and procedure, Appraisal management company registry fees, Appraisers, Banks, Banking, Freedom of information, Mortgages, Reporting and recordkeeping requirements.

### **Authority and Issuance**

For the reasons set forth in the preamble, the ASC amends 12 CFR part 1102 as follows:

### **PART 1102—APPRAISER REGULATION**

1. The authority for part 1102 continues to read as follows:

**Authority:** 12 U.S.C. 3348(a), 3332, 3335, 3338 (a)(4)(B), 3348(c), 5 U.S.C. 552a,

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<sup>19</sup> 5 U.S.C. 603(a) and 604(a).

<sup>20</sup> 44 U.S.C. 3501–3521.

553(e); Executive Order 12600, 52 FR 23781 (3 CFR, 1987 Comp., p. 235).

2. Subpart A is revised to read as follows:

**Subpart A—Temporary Waiver Requests**

Sec.

- 1102.1 Authority, purpose, and scope.
- 1102.2 Definitions.
- 1102.3 Request for Temporary Waiver.
- 1102.4 Petition requesting the ASC initiate a temporary waiver proceeding.
- 1102.5 Order initiating a temporary waiver proceeding.
- 1102.6 Notice and comment.
- 1102.7 ASC determination.
- 1102.8 Waiver extension.
- 1102.9 Waiver termination.

**Authority:** 12 U.S.C. 3348(b).

**§ 1102.1 Authority, purpose, and scope.**

(a) *Authority.* This subpart is issued under section 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI; 12 U.S.C. 3348(b)).

(b) *Purpose and scope.* This subpart prescribes rules of practice and procedure governing temporary waiver proceedings under section 1119(b) of Title XI (12 U.S.C. 3348(b)). These procedures apply whenever a Request for Temporary Waiver is submitted to the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) for a temporary waiver of any requirement relating to State certification or licensing (credentialing requirements) of persons eligible to perform appraisals for federally related transactions (FRTs) under Title XI. These procedures also apply in the event the ASC receives a Petition requesting the ASC initiate a temporary waiver proceeding. This subpart also contains the ASC's interpretations of terms used in section 1119(b) of Title XI.

**§ 1102.2 Definitions.**

For purposes of this subpart:

(a) *Federally related transaction (FRT)* means any real estate-related financial transaction which:

(1) A Federal financial institutions regulatory agency engages in, contracts for, or regulates; and

(2) Requires the services of an appraiser under the interagency appraisal rules. ((Title XI, section 1121(4), 12 U.S.C. 3350), implemented by the Office of the Comptroller of the Currency: 12 CFR 34.42(g) and 34.43(a); Federal Reserve Board: 12 CFR 225.62 and 225.63(a); Federal Deposit Insurance Corporation: 12 CFR 323.2(f) and 323.3(a); and National Credit Union Administration: 12 CFR 722.2(f) and 722.3(a).)

(b) *Performance of appraisals* means the appraisal service requested of an appraiser is provided to the lender or appraisal management company (AMC).

(c) *Petition* means information submitted to the ASC by the Federal or State financial institutions regulatory agencies, their respective regulated financial institutions, or other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency, asking the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding, and that meets the requirements, as determined by the ASC, set forth in § 1102.4.

(d) *Request for Temporary Waiver* means information submitted to the ASC by a State Appraisal Agency with a written determination requesting a temporary waiver that meets the requirements, as determined by the ASC, set forth in § 1102.3.

(e) *Scarcity of certified or licensed appraisers* means the number of active certified or licensed appraisers within a State or a specified geographical political subdivision is insufficient to meet the demand for appraisal services and such appraisers are difficult to retain.

(f) *Significant delays in the performance of appraisals* means delays that are substantially out of the ordinary when compared to performance of appraisals for similarly situated FRTs based on factors such as geographic location (e.g., rural versus urban) and assignment type, and the delay is not the result of intervening circumstances outside the appraiser's control or brought about by the appraiser's client (e.g., inability to access the subject property).

(g) *State Appraisal Agency* means the State appraiser certifying and licensing agency (Title XI, section 1121(1); *see also* 12 U.S.C. 3350(1)).

(h) *Temporary waiver* means a waiver of any or all credentialing requirements for persons eligible to perform appraisals for FRTs; if granted, a temporary waiver does not waive the requirement for a *Uniform Standards of Professional Appraisal Practice* (USPAP)-compliant appraisal.

### **§ 1102.3 Request for Temporary Waiver.**

(a) *Who can file a Request for Temporary Waiver.* The State Appraisal Agency for the State in which the temporary waiver relief is sought may file a Request for Temporary Waiver.

(b) *Contents and receipt of a Request for Temporary Waiver.* A Request for Temporary Waiver from a State Appraisal Agency will not be deemed received by the ASC unless it fully and accurately sets out:

(1) A written determination by the State Appraisal Agency that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State;

(2) The requirement(s) of State law from which relief is being sought;

(3) The nature of the scarcity of certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);

(4) The extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable);

(5) How complaints concerning appraisals by persons who are not certified or licensed would be processed in the event a temporary waiver is granted; and

(6) Meaningful suggestions and recommendations for remedying the situation.

(c) *Receipt of a Request for Temporary Waiver.* A Request for Temporary Waiver shall be deemed received for purposes of publication in the *Federal Register* for notice and comment if the ASC determines that the information submitted meets the requirements of paragraph (b) of this section to support that a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

(d) *Deny or refer back.* In the event the Request for Temporary Waiver is not deemed received, it may be denied in its entirety or referred back to the State Appraisal Agency for further action. In either case, the ASC shall provide written notice to the State Appraisal Agency providing an explanation for the determination.

#### **§ 1102.4 Petition requesting the ASC initiate a temporary waiver proceeding.**

(a) *Who can file a Petition requesting the ASC initiate a temporary waiver proceeding.* The Federal or State financial institutions regulatory agencies, their respective regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, including a State Appraisal Agency, may petition the ASC to exercise its discretionary authority to initiate a temporary waiver proceeding.

(b) *Contents of a Petition.* (1) A Petition should include:

(i) Information (statistical or otherwise verifiable) to support the existence of a scarcity of certified or licensed appraisers leading to significant delays in the performance of

appraisals for FRTs or a specified class of FRTs for either a portion of, or the entire State;  
and

(ii) The extent of the delays anticipated or experienced in the performance of appraisals by certified or licensed appraisers (including supporting documentation, statistical or otherwise verifiable).

(2) A Petition may also include meaningful suggestions and recommendations for remedying the situation.

(c) *Copy of Petition to State Appraisal Agency.* In the case of a Petition from a party other than a State Appraisal Agency, the party must promptly provide a copy of its Petition to the State Appraisal Agency.

(d) *ASC review of a Petition.* A Petition may be processed for further action if the ASC determines that the information submitted meets the requirements of paragraph (b) of this section and that further action should be taken to determine whether a scarcity of appraisers exists and that the scarcity is leading to significant delays in the performance of appraisals for FRTs or a specified class of FRTs within either a portion of, or the entire State.

(e) *Deny or refer back.* In the event a Petition does not meet the requirements of paragraph (b) of this section it may be denied in its entirety or referred back to the petitioner for further action. In either event, the ASC shall provide written notice to the petitioner providing an explanation for the determination.

(f) *Further action on a Petition.* If the ASC determines that a Petition should be processed for further action, at its discretion the ASC may:

(1) Refer a Petition to the State Appraisal Agency where temporary waiver relief is sought for further evaluation and study, to include items that would be addressed in a Request for Temporary Waiver (*see* § 1102.3(b)); or

(2) Take further action without referring the Petition to the State Appraisal Agency.

(g) *State Appraisal Agency action.* (1) In the event the State Appraisal Agency opts to conduct further evaluation and study on a Petition, the State Appraisal Agency may:

(i) Issue a written determination that there is a scarcity of certified or licensed appraisers leading to significant delays in the performance of appraisals for FRTs or a class of FRTs within either a portion of, or the entire State (or request that the ASC issue such a written determination), in which case, the procedures and requirements of §§ 1102.3 and 1102.6(a) shall apply; or

(ii) Recommend that the ASC take no further action.

(2) In the event the State Appraisal Agency either recommends no further action or declines to conduct further evaluation and study on a Petition, the ASC may exercise its discretion in determining whether to issue an Order initiating a temporary waiver proceeding in accordance with § 1102.5(a).

#### **§ 1102.5 Order initiating a temporary waiver proceeding.**

The ASC may exercise discretion in determining whether to issue an Order initiating a temporary waiver proceeding in response to a Petition, or alternatively, the ASC may exercise discretion to initiate a temporary waiver proceeding on its own initiative without a Petition being submitted.

In either event, such an Order would include consideration of certain items that would be addressed in a Request for Temporary Waiver. (*See e.g.*, § 1102.3(b)(2) through (6).) If such an Order is issued, the ASC shall publish a *Federal Register* notice in accordance with § 1102.6(b).

#### **§ 1102.6 Notice and comment.**

(a) The ASC shall publish promptly in the *Federal Register* a notice respecting:

(1) A received Request for Temporary Waiver (*see* §1102.3(c)); or

(2) An ASC Order initiating a temporary waiver proceeding (*see* § 1102.5).

(b) The notice of a received Request for Temporary Waiver or ASC Order initiating a temporary waiver proceeding shall contain a concise statement of the nature and basis for the action and

shall give interested persons 30 calendar days from its publication in which to submit written data, views, and arguments.

**§ 1102.7 ASC determination.**

(a) *Order by the ASC.* Within 90 calendar days of the date of publication of the notice in the *Federal Register*, the ASC, by Order, shall either grant or deny a waiver, in whole or in part, and upon specified terms and conditions, including provisions for waiver termination. The Order shall be published in the *Federal Register*, which in the case of an Order approving a waiver, shall only be published after FFIEC approval of the waiver (*see* paragraph (b) of this section). Such Order shall respond to comments received from interested members of the public and shall provide the reasons for the ASC's finding(s).

(b) *Approval by the FFIEC.* Any ASC Order approving a waiver shall be effective only upon FFIEC approval of the waiver. FFIEC consideration of a waiver is not subject to the ASC's 90-day timeframe for a determination.

**§ 1102.8 Waiver extension.**

The ASC may initiate an extension of temporary waiver relief and shall follow §§ 1102.6, 1102.7 and 1102.9. A State Appraisal Agency also may seek an extension of temporary waiver relief by forwarding an additional written Request for Temporary Waiver to the ASC. A request for an extension from a State Appraisal Agency shall be subject to all the requirements of this subpart.

**§ 1102.9 Waiver termination.**

(a) *Mandatory waiver termination.* The ASC shall terminate a temporary waiver Order when the ASC determines that significant delays in the performance of appraisals by certified or licensed appraisers no longer exist.

(b) *Discretionary waiver termination.* The ASC at any time may terminate a waiver Order on the finding that the terms and conditions of the waiver Order are not being satisfied.

(c) *Publication in the Federal Register.* The ASC shall publish either a mandatory or discretionary waiver termination in the *Federal Register*, and a discretionary waiver termination



requires such publication with a 30-day comment period. In the absence of further ASC action to the contrary, a discretionary waiver termination automatically becomes final 21 calendar days after the close of the comment period. A mandatory waiver termination is final upon such a determination being made by the ASC.

By the Appraisal Subcommittee,

Dated: September 29, 2022.

**Zixta Martinez,**  
*Chairperson.*

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